
(1970) 12 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1772 of 1966

Shri Brij Lal

APPELLANT

Vs

Shri Jaspal Singh and others

RESPONDENT

Date of Decision : 11-12-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1970) 12 P&H CK 0009

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Advocate : G.S. Grewal, for the Appellant; Bachittar Singh, for the Respondent

Judgement

A.D. Koshal, J.—In this Petition under Articles 226 and 227 of the Constitution of India, Brij Lal a resident of village Beraich (Kail) in District Ludhiana, seeks to have an order dated the 25th of May, 1966 (Annexure"B") passed by Shri Jaspal Singh, Additional Director, Consolidation of Holdings, Punjab, Chandigarh (Respondent No. 1) quashed by a writ of certiorari.

2. There is no dispute about the facts giving rise to this petition and the same are these A notification u/s 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act) bearing dated 13th of September, 1956, was published in the Punjab Government Gazette on the 5th of October, 1956. By this notification the Punjab Government declared its intention to make a scheme for the consolidation of holdings in village Beraich (Kail), Nothing further was done in pursuance of the notification for about a year and a half and then the notification was published by beat of drum in the said village on the 21st of April, 1958. A further period of eleven months passed before the proceedings for the consolidation of the land in the village were actually started on the 23rd of March, 1959.

By virtue of the impugned order respondent No. 1, held that the petitioner would not be entitled to be given during the consolidation of holdings any benefit for

the land purchased by him on the 19th of September, 1956, in as much as he acquired it after the 13th of September, 1956. The order was apparently passed with reference to the provisions of Section 30 of the Act which may be quoted:

After a notification under Sub-section (1) of Section 14 has issued and during the pendency of the consolidation proceedings no landowner or tenant having a right of occupancy upon whom the scheme will be binding shall have power without the sanction of the consolidation officer "to transfer or otherwise deal with any portion of his original holding or other tenancy so as to effect the rights of any other landowner or tenant having a right of occupancy therein under the scheme of consolidation.

3. The said order of respondent No. 1 is challenged on the following grounds:

(a) The notification u/s 14 (1) could not be held to have been issued on the date which it bears. The date of its issue must be taken to be the date of its publication in the Gazette.

(b) No consolidation proceedings were pending in the village from the 13th of September, 1956. to the 23rd of March 1959, and the provisions of Section 30 could not cover transfers effected during that period.

4. I need not go into the merits of ground (a) as the petition must succeed on the other ground. Before the case of a transfer can be said to fall within the ambit of Section 30 of the Act, two conditions must be fulfilled by it and they are:

(i) That it must take place after a notification under Sub-section (1) of Section 14 of the Act has issued and

(ii) that it must have taken place during the pendency of the consolidation proceeding.

5. Condition (ii) is not fulfilled in the case of the purchase made by the petitioner. The mere issuance of a notification u/s 14(1) of the Act does not have the effect of bringing consolidation proceedings into operation but only declares the intention of the Government to make (at some future date) a scheme for the consolidation of holdings Unless the intention is carried into effect and proceedings for the consolidation of holdings are actually commenced with the appointment of a Consolidation Officer and the preparation of a scheme, such proceedings cannot be deemed pending. This was also the view taken by Tuli, J. in *Balwant Singh, etc. v. The Financial Commissioner, Punjab, etc.* C.W. 603 of 1967, Civil Writ No. 603 of 1967, decided on the 30th of October, 1968 It must consequently be held that the case of the petitioner is not covered by the provisions of Section 30 of the Act. The impugned order must in consequence be held to have been made in contravention of those provisions and, therefore, to be Void, It is accordingly quashed hereby. There will be no order as to costs.